IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3687 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OTARAM JAYSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3687 of 2004

MR CHETAN K PANDYA for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 09/09/2004

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner is presently holding the post of Assistant Sub-Inspector, Grade-I SRP. The petitioner had earlier filed Special Civil Application No. 2619 of 1994 for redressal of his grievance regarding non-promotion to

the post of Head Constable Grade-I. That petition came to be allowed by judgment dated 6.12.1999 (Annexure "A") in the following terms :-

> "In view of the above discussion, this petition deserves to be allowed in part and is accordingly allowed in part. The department is directed to consider the case of the petitioner for promotion to the post of head constable grade-I on and from 26.6.92 and promote him if he is found fit for the same, with all consequential benefits. The department shall consider the case of the petitioner for promotion within a period of two months from the date of production of a certified copy of this judgment. Rule is made absolute accordingly with no order as to costs."

In compliance with the above judgment, the Commandant of SRP Grade-I passed order dated 16.9.2002 (Annexure "B") granting the petitioner deemed date of promotion to the post of Armed Head Constable from 27.6.1992 and fixing the petitioner's salary on that basis and also sanctioned the payment of arrears of difference of salary and allowances on the basis of the refixed pay. The details of such arrears are worked out by the petitioner himself as per the figures in Annexure "C" to the petition which work out to about Rs.50,924/-. However, by the impugned order dated 6.10.2003 (Annexure "D"), the Commandant, SRP Grade-I, Baroda has cancelled the pay fixation made under the order dated 16.9.2002 (Annexure "B") and has refixed the petitioner's pay reducing the pay from Rs.5,000/Rs.5,100 to Rs.4700/- from 1.9.2002 and at Rs.4800/- from 1.9.2003.

3. Mr Chetan Pandya, learned counsel for the petitioner has submitted that apart from the contentions available to the petitioner on merits, the impugned order is illegal because the petitioner was not given any show cause notice or any opportunity of hearing before passing such order entailing the civil consequence of reduction of the petitioner's pay.

4. Mr Nagesh Sood, learned AGP appearing for the respondent authorities submits that since the department has filed Letters Patent Appeal against the aforesaid judgment dated 6.12.1999 in Special Civil Application No.2619 of 1994, the petitioner was not entitled to the benefits conferred upon him by order dated 16.9.2002 (Annexure "B") and, therefore, the petition deserves to be dismissed.

Mr Sood has further submitted that since no person junior to the petitioner was promoted to the cadre of Head Constable Grade-I on 26.6.1992, the petitioner was not entitled to any deemed date of promotion.

5. In rejoinder, Mr Pandya points out that the LPA was dismissed for non-prosecution on 9.8.2000 and thereafter it was restored. Thereafter the respondents pressed their application for condonation of delay in filing the appeal which application has been granted on 19.7.2004, but till date the respondents have not obtained any stay of the operation and implementation of the judgment dated 6.12.1999 in Special Civil Application No. 2619 of 1994 which in any case was implemented by the order dated 16.9.2002 (Annexure "B").

6. Having heard the learned counsel for the parties, it appears to the Court that what the respondents are essentially attempting to do is to challenge the direction given by the learned Single Judge of this Court in the judgment dated 6.12.1999 in SCA No. 2619 of 1994 before this Court which is not at all permissible. Whatever contentions the respondents want to raise have to be raised in their LPA. Not having obtained any stay against the said judgment dated 6.12.1999 and the respondents having passed the order dated 16.9.2002 (Annexure "B"), the respondents are not entitled to act contrary to the aforesaid judgment dated 6.12.1999 of this Court in SCA No. 2619 of 1994 and in that view of the matter, the respondents could not have passed the impugned order dated 6.10.2003 (Annexure "D") without issuing any show cause notice and without giving the petitioner any opportunity of being heard. Accordingly, the said order dated 6.10.2003 deserves to be quashed and set aside.

7. In the result, this petition is partly allowed. Subject to the orders which may be passed in the Letters Patent Appeal in SCA No. 2619 of 1994, the impugned order dated 6.10.2003 at Annexure "D" is quashed and set aside without prejudice to the respondents' right to issue a show cause notice and to take appropriate decision thereafter after giving the petitioner an opportunity of being heard.

It is clarified that since the respondents have preferred the Letters Patent Appeal against the judgment dated 6.12.1999 in SCA No. 2619 of 1994, this order shall not come in the way of the respondents herein raising appropriate contentions in the LPA nor shall this judgment be treated as expression of any opinion on the

merits of the controversy between the parties. If the Letters Patent Appeal is allowed and SCA No. 2619 of 1994 is dismissed, this order shall no longer remain operative.

8. At this stage, in view of the request being made by Mr Sood, learned AGP for the respondents, it is directed that the status quo as prevailing today shall continue till 11.10.2004. In case, no stay is granted by the LPA Bench till 11.10.2004, the respondents shall act as per the order dated 16.9.2002 at Annexure "B" to the petition.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-